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## **Does illegality enable or undermine the sustainability of the globalising economy?**

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## **Introduction**

There is an extensive and well-known literature that examines relationships between the economic, environmental, political and social dimensions of sustainability and the potential synergies, conflicts and trade-offs among these. Understanding these poses both theoretical and practical challenges. There undoubtedly are hard choices to be made as to priorities and differing views as to the compatibility of objectives relating to these four dimensions. In particular, there is continuing disagreement as to the extent to which and ways in which an economy driven by the imperatives of capital can or can not be made compatible with the pursuit of environmental and social sustainability. By and large, however, the discussion is limited to a conceptualisation of the economy that is composed of formally regulated and legally sanctioned activities. This is at best a partial conceptualisation, however, as a significant proportion of activity in the global capitalist economy is in one way or another illegal. Recognition of this raises important questions both as to the relationship between the legal and illegal and – the focus of this Chapter – the implications of the prominence of the illegal for the sustainability of the economy itself and for the successful pursuit of other dimensions of sustainability.

At one level, the definition of the illegal seems straightforward. Illegal economic activity can be defined as “[t]hose productive activities that generate goods and services forbidden by law or that are unlawful when carried out by unauthorised producers” (OECD, 2002, 13). As this definition makes clear, however, the legal and illegal are relationally defined, with the line between them varying among different territorial jurisdictions at different spatial scales, most commonly the scale of the national state, and over time. Bearing this definitional qualification in mind, authorities such as the IMF and World Bank estimate that the illegal economy accounts for perhaps 20% of global GDP and considerably more in particular territories and jurisdictions (for example, 40-50% or more in (so-called) transitional economies and developing economies: Glenny, 2008). However, illegal activities are by means confined to these parts of the world. They are also present in a range of spaces in the core capitalist economies of the developed world – ranging from pivotal financial districts in major metropolitan city-regions to diverse deindustrialised and marginalised places. In short, the illegal is rife and permeates the space-economy of contemporary capitalism and cuts across and problematises binaries such as core/periphery, developed/underdeveloped

and North/South. The questions posed and to be explored in this chapter are, on the one hand, to what extent do illegal activities undermine the sustainability of the contemporary global economy, and on the other hand and perhaps seemingly counter-intuitively, to what extent are illegal activities integral to the economic sustainability of the global economy? Linked to these is a number of questions as to the relationships between economic, environmental, social and political sustainability for while illegality may help sustain the global economy it may at the same time contribute to the erosion of the environmental (via illegal production and dumping of polluting wastes, for example) , political (via challenging the legitimacy of national states, for example) and social (as a result of the effects of illegal labour migration and employment of child labour , for example) dimensions of sustainability. While the main focus of the Chapter is upon the relationships between illegality and the economic sustainability of the global economy, these other aspects of sustainability will be touched upon where they are affected by the presence of illegal economic activities .

The extent of illegality suggests that understandings of the capital accumulation process and the sustainability of the economy that rely solely upon published statistics relating to the formal legal economy are, at best, partial both in terms of the relative weight of broad sectors of activity and also the dynamics of individual companies within them. There is an obvious difficulty in estimating the magnitude and effects of illegal activity and its articulations with the legal precisely because it is beyond the gaze of national states and other bodies that regulate the legal economy and generate the data that describe it (although that is not to say without their connivance on occasion). However, I agree with Castells (2010, 173) that difficulties in obtaining precise empirical data on the extent of illegality should not stand in the way of seeking to understand its function and practices and the relations between the legal and illegal. While always present within capitalist economies, the illegal has clearly expanded to become an integral part of the contemporary phase of capitalist development, given greater prominence because of the tendency to neo-liberalisation, giving greater freedom to lightly regulated markets, enabled by revolutionary advances in ICTs. Illegal practices are present in routine production in factories and workplaces, in the widespread theft of intellectual property (IP) and the growth of counterfeit 'knock offs' and forgeries, in a variety of exchange and trading activities (flows of

people, arms, cigarettes, and drugs for example) and crucially in flows of money and money laundering activities in centres of global finance that convert massive sums of money generated in illegal activities into legitimate money capital in the formal mainstream economy.

While there is a definitional difficulty, then, it is clear that illegal activities typically form a substantial part of total economic activity, a big enough part for them to be considered as an integral part of the normal workings of the capitalist economy rather than a marginal anomaly (Brown and Cloke, 2007; Murphy, 2011). However, the spatial and temporal variation in the significance of the illegal and in the coupling of illegal and legal suggests that while each depends upon the other, the relationship between them is contingent as well as symbiotic. As a result, the significance of the illegal to economic sustainability - and so its effects upon environmental, political and social sustainability - varies over both space and time.

Clearly, then, how, when and where legal and illegal activities intersect in the circuits of capital and spaces of capitalist economic activity is a critical issue (Castells, 2010; Nordstrom, 2007). There are also important questions as to how illegal activities are governed and regulated in different spaces and times and how their modes of regulation relate to those of the mainstream legal economy. This is particularly so as there is a tension integral to capitalism, inherent in the primacy of the profit motive, between the need for competing companies to operate according to the 'rules of the game', and the pressure to bend those rules (Murphy, 2011, 135). The same point can to an extent be made about national states in their competition for economic activity and investment. The primacy of competition and the profit motive results in a tendency for the boundary between the legal and the illegal to be blurred, if not outright transgressed, and for such blurring to be structurally embedded in the day-to-day operations and practices of capitalist economies. How, where and to what extent such blurring occurs, however, varies between times and spaces. Nevertheless the links between the legal and illegal are critical to the dynamic, trajectory, spatiality and sustainability of accumulation globally.

In the remainder of this chapter, and recognising the prevalence of the illegal across the global economy and its centrality in a variety of forms of production and flows of people and

things, I will explore the scope of the illegal and its links to the legal in a preliminary way via two main sets of activities. First, the presence of illegal working practices and other violations of the legal frameworks within which production, exchange and trade are carried out in particular spaces. This will also involve some consideration of illegal flows of labour. Secondly, the extent to which the legal permeates the practices that make possible flows of money within the illegal economy and, crucially, from the illegal into the legal mainstream. While the first issue is critical to the success or otherwise of competing companies it also poses risks to environmental, political and social sustainability; the second is critical to the sustainability of sovereign states and beyond that to the systemic sustainability of the contemporary form of globalising capitalism.

### **New forms of corporate organisation and the further growth of illegal working practices in the globalising economy**

Since the initial discovery of the New International Division of Labour (Fröbel et al, 1980) there has been a keen interest in the relationships between new forms of corporate organisation and new ways of capital using spatial difference in pursuit of profit, one consequence of which has been growing inequalities in economic well-being and performance at scales ranging from the global to the local (Hudson, 2001). This enhanced interest in spatial differences has been one consequence of the growing emphasis on the activities of MNCs and their transition to becoming managers of brands and brand families while seeking to out-source material commodity production to the cheapest feasible location (Hudson, 2005, 63-75). For the significance of brands, typically tied to specific proprietary markers, such as hieroglyphs, logos or individuals, which define both the brand and particular brand families (Klein, 2000) is that they enable their corporate owners to reap surplus profits. The focus on brand management is linked to an emphasis on product differentiation, high level R&D, advertising, marketing and PR, on the upper echelons of the value chain. Companies retain these activities in their core spaces while out-sourcing and increasingly off-shoring routine production of components and assembly work and increasingly some aspects of back office work and routine R&D to form complex globally distributed production systems and thereby reduce production costs. There has been an increasing recognition of this in analyses of Global Production Networks (GPNs), global value

chains and global commodity chains and the ways in which the production of commodities involves complex links and flows of materials and value between a diverse range of spaces in different parts of the world (Hudson, 2008).

### **Illegality, migration and labour markets**

What has not been considered in any systematic way, however, is the centrality of illegal working practices in the emergence and economic sustainability of such global chains and networks and their implications for other dimensions of sustainability. Increasingly within these various forms of global production systems much routine production work is re-located not simply to spaces in which labour and other production costs are lower but to spaces in which they can be further lowered by the widespread use of illegal working practices. Illegality lies at the heart of the production process. There is, for example, compelling evidence of this in China, Indonesia, India, Burma and other parts of south east Asia as well as parts of central and eastern Europe, across a wide range of industries including clothing and textiles and consumer electronics (mobile phones, PCs and their various components and offshoots such as tablets) in the new 'workshops of the world' of 21st century capitalism. In their journey through global chains and networks many commodities may therefore routinely involve legal and illegal activities and pass through both legally and illegally regulated spaces.

As a consequence in many parts of the world the organisation of production and more specifically the moment of production itself in which surplus-value is produced and which is central to any form of capitalist production is now critically dependent upon some combination of legal and illegal labour and working practices. Illegal labour can be provided by members of an indigenous population, for example via child labour or indentured labour and there is widespread evidence of this. However, the supply of illegal labour is also linked to flows of migrant workers and this has increased in significance as processes of globalisation have widened and deepened.

Illegal labour that is not legally purchased on formally regulated labour markets may then be deployed as labour-power in activities that are legal, although those illegal migrants who perform such work are not authorised to do so. This has profound implications for both capital and labour. For capital it enables the costs of production to be driven down further.

For those who provide labour-power, it has serious implications for the precariousness of their position in the labour market, level of wages, and working and living conditions as labour market inequality and social inequality more generally widen as a result.

Labour-power provided via migrant workers can have a doubly downward effect on production costs. Since labour is always produced as a fictive commodity and indeed has to be in order that commodified labour-power can come into existence (Elson, 1979), the price that capital has to pay to secure labour-power reflects the conditions under which labour is reproduced, and the distribution of the costs of that reproduction (as between family, community, and state) over time and space. As a result, migrant labour can reduce production costs in three ways. Firstly, within legal systems of both intra-national (notably China in recent years) and international (for example from the Mediterranean region to northern Europe) migrant labour flows, because the costs of reproduction of such labour have been displaced elsewhere in time/space. Secondly, and in addition, because illegal migrant labour by definition lacks citizenship and legal rights, it is particularly vulnerable to further hyper-exploitation and in this way can lead to a further lowering of production costs. Furthermore, thirdly, such labour can displace indigenous labour and so expand labour reserves, further pushing down wages and the value of labour-power and enhancing rates of exploitation, profit and accumulation more generally. National states may on occasion turn a blind eye to such illegal migration in order to intensify labour market competition as one strand of broader neoliberal strategies (Evans et al, 2006, 61).

In some cases, workers who were initially legal migrants lose their jobs and so become illegal migrants as their work permits expire. Often, in these circumstances, they are unable to return to their country of origin because of indebtedness incurred through the payment of fees to agents in order to become migrants in the first place. As a result, they become vulnerable to recruitment as illegal labour with a very precarious existence. In other cases, especially involving agency contract workers, agencies deliberately arrange for people to become illegal immigrants in order that they can be employed on inferior conditions and lower wages (SOMO, 2009).

**Illegal practices in the circuit of productive capital: mining, manufacturing and trade**



Manufacturing involves processes of both value creation and material transformation. The starting point for the manufacturing process and the creation of socially useful and valued commodities under capitalist relations of production is therefore the transformation of elements of the natural world. An important strand of this initial stage in the production process involves winning minerals via mining them from the earth. Many critical minerals are found in parts of the world conventionally regarded as underdeveloped, such as Africa and parts of Asia and south America. In these locations political elites often continue to look favourably on investment in mining by MNCs as, allegedly, a post-colonial route to development. While much mining activity is legal, there are also numerous instances of illegal mining of minerals such as copper, palladium, platinum and tin involving unauthorised workers including children or indentured labour and/or workers working under conditions that otherwise violate labour laws (for example, see Action Against Impunity for Human Rights, 2011; Erman, 2007; Nordbrand and Bolme, 2007; Pöyhönen and Simola, 2007). Such minerals then enter complex patterns of international trade and the supply chains of major multinationals that use them as inputs to their production processes. The pathways through which such minerals make their way to legal manufacturing locations are often opaque. The effect of such flows is to cut production costs for companies using these materials and components made from them, enabling them to undercut competitors, enhance market share and profitability and so their sustainability as competitive capital. However, at the same time illegal mining activities can undermine both ecological and social sustainability as a direct result of mining, and because of toxic wastes that are dumped untreated into the environment with deleterious effects upon both environmental and human health and well-being. There are clear tensions between various dimensions of sustainability and the interests, influence and asymmetrical power of different classes is decisive in determining how these are managed and resolved, in determining who benefits from and who bears the costs of such activities .

Illegality is far from being confined to mining and other activities involving material transformations at the start of the production process and then onwards through manufacturing, however. Moreover, it takes a variety of different forms. For example, it also involves the widespread theft of intellectual property (IP) and related activities throughout manufacturing in many parts of the world in a range of industries producing manufactured

goods for mainstream legal markets: “today nearly every consumer and industrial product is subject to counterfeiting” (OECD, 2007, cited in Chaudhry and Zimmerman, 2010, 26). Counterfeit goods account for about 7% of global trade, with two thirds of these originating in China alone (Glenny, 2008; Phillips, 2005). Russia and some other south Asian and Latin American countries are also major sources of counterfeit production (Chaudhry and Zimmerman, 2010). As well as ‘knock offs’ and counterfeit goods, illegal production can involve theft of IP and illegal copies of branded goods, in both cases goods that may be produced by workers who are legitimate and legal (Phillips, 2005). However, they may also be produced by illegal workers, resulting in “good copies” (Saviano, 2008) being produced at very low labour cost..

Furthermore, labour-power that is legally purchased on the labour market – that is, from workers whose status is legal as opposed to those who are illegal - can be illegally employed because of the structural weakness of labour in particular spaces of production. For example companies may withhold wages and force workers to work beyond the legal limit for overtime, violating both national legislation and international agreements such as the ILO’s Hours of Work Convention and exacerbating labour market inequality as a result. In addition, workers may be forced to work in conditions that violate environmental, labour and health and safety legislation and in illegal production processes that lead to environmental pollution via the illegal dumping of (often toxic) wastes (Hudson, 2010). Often workers have little choice but to work excessive and illegal overtime because their legal basic wage is below the level of a ‘living wage’ or because they are forced to work ‘voluntary’ unpaid overtime on pain of the threat of dismissal or other sanctions if they refuse to do so (Nordbrand and de Haan, 2009). Consequently, the boundaries between legal and illegal in production are frequently fuzzy and unclear. Furthermore, illegally produced goods may be packed and distributed by legal businesses, further blurring the boundary between legal and illegal.

There is a long history of smuggling across national borders and this continues, as places such as Ciudad del Este on the Paraguayan-Brazilian- Argentinian border (the “Triple Frontier”) clearly reveal (for example, see Naím, 2007; Neuwirth, 2012). More significantly, however, the tremendous growth in containerised transport on a global scale has both

added to the problems of environmental sustainability and also complicated the process of identifying illegally produced goods as these can be mixed in with legally produced goods. The United Nations (2008) estimated that 420 million containers are shipped around the world every year, virtually uninspected (United Nations, 2008). Such is the scale of movement of containers through the major ports that form the key nodal points in global transport networks that it is impossible for customs officials to check more than a small sample of containers entering and leaving a port. In part this reflects the volume of containers, in part the low priority attached to checking them. For example, in 1992 only five Dutch customs agents were allocated systematically to examine the cargo manifests of the 32,000 ships docking in Rotterdam each year so that they were only checking an average of six of the the 6,000 containers off-loaded each day (Sterling, 1994, 247). As a result, as Nordstrom put it (2007, xvi): "As I sit watching the 446 cargo ships enter and leave the mega-port of Rotterdam a day, I know I am watching somewhere between 200 and 446 ships breaking the law in some way. By most estimates I have received in these five years, it is more along the lines of 446". By 2010 almost 8,500,000 containers passed through the port of Antwerp, with customs officials unable to screen even 2.0% of all declared goods, using scanners and other devices. There were only 8 customs officials working on drugs issues, compared to 100 in the port of Hamburg. As a result, there is no information as to the precise amount of illegal goods smuggled through Antwerp, but it is undoubtedly a significant amount, contained in perhaps 1,000 containers a year (Clerix, 2011). There is no doubt that drugs, principally cocaine from south America (Colombia, Ecuador, Panama, Peru), continue to be smuggled through Antwerp in significant amounts, concealed in containers among legitimate cargo, usually hidden in fake fruit (such as bananas and pineapples) or among cargoes of timber.

Moreover, smuggled drugs are being removed from the port of Antwerp in increasingly novel and sophisticated ways. Criminal drugs gangs have hired specialist criminal hackers to hack into the terminal operating IT systems. The hackers then broke into the shipping company offices, attaching tracking devices to computer terminals, which allowed them to remotely monitor everything typed on the computer's key board and access passwords and screengrabs, or installed malware to gain access to information on their hard disks. This enabled the drug smugglers to identify the specific containers containing drugs, send in their

own lorry drivers, load the identified containers onto their lorries and remove the containers from the port before their legitimate owners, blissfully unaware of what was happening, could do so. This was a clear indication that the smuggling activities had reached new levels of organisational and technological sophistication, as groups of criminals from the worlds of drugs and IT came together in project teams to retrieve specific containers (Global Post, 2012; Freeman, 2013). It seems unlikely that such developments are limited to Antwerp.

Illegal employment practices in production, such as those described above, are often facilitated by the absence of trades unions (for example in “no union no strike” Export Production Zones) or the presence of unions that are effectively under state control and/or the influence of employers. Such practices are also widespread over much of south east Asia and in Central and Eastern Europe, both in sectors such as consumer electronics and IT that are commonly represented as “high tech” and “clean” production (for example, see Chan et al, 2008; Mackay, 2004; Pöyhönen and Wan, 2011;) as well as industries commonly seen ‘traditional’ and labour-intensive in their production methods, such as brick making or clothing production (for example, see Oonk et al, 2012; Upadhyaya, 2008). Commodities produced under these circumstances can then compete with and undercut legitimately produced commodities, reducing the market share and profits of those producers operating legally and conforming to the requirements of labour legislation. Commodities produced by illegal workers enable those companies that employ them (whether directly or indirectly, knowingly or unknowingly) to undercut those produced by companies employing labour employed legally – with implications for the conditions of those so employed, for uneven development among companies and spaces and also for systemic sustainability.

The re-location of routine production work within global production systems to spaces in which labour and other production costs can be further lowered through illegal working practices, both via the intensification of work and the systematic extension of working time beyond legal maxima, therefore increases the production of absolute surplus-value. The net result is to increase the profitability of production, especially for those major MNCs that are the brand managers at the head of the value chain that control the production systems. While major MNCs have often put in place Corporate Social Responsibility policies that

prescribe working conditions and practices, under pressure from NGOs and consumers in the countries that are the predominant markets for products produced in this way, these rarely extend beyond first-tier suppliers. Moreover, these policies are routinely breached. This is because they conflict with competitive pressures to cut costs and lead to managers deliberately falsifying employment records to disguise illegal overtime and underpayment of wages (Sum and Ngai, 2005).

At the same time, however, the switch of much routine production away from 'traditional' industrial cities and regions in core countries has created spaces in which other forms of illegality have emerged, in part as people there seek to construct survival strategies in spaces that have become marginal to, or expelled from, mainstream circuits of capital. As employment in the mainstream legal economy has shrunk dramatically such spaces form fertile ground in which a range of illegal trading activities – not least those focussed on drugs – as well as illicit and/or illegal production activities, often involving illegal migrant workers, have taken root and expanded (Evans et al, 2006). Sometimes this growth has been symbiotically linked to the growth of an incarcerated prison population (Peck and Theodore, 2008). Often such activities result in the erosion of environmental as well as social sustainability because of the illegal dumping of wastes and pollutants (Saviano, 2008). The net result of these interrelated changes to the economy and labour market is that the economic and employment structures of these spaces in core countries have come to resemble those thought typical of the booming cities of peripheral countries in Africa, Asia and central and south America (for example, see Portes et al, 1989), with adverse effects on other dimensions of sustainability.

### **Illegality and the 'blind eyes' of the state**

It is clear that the proliferation of illegal activities in many parts of the world, especially those on the margins, often involves the entanglement of elements of the legal state and its officials in illegal activities (flows of labour, trade, and the production of goods) either directly or by indirectly sanctioning them by turning a 'blind eye' (in return for a financial consideration) to their existence (for example, see Castells, 2010; Glenny, 2008; Hill, 2005; Pöyhönen and Simola, 2007; Saviano, 2008). Alternatively, state officials may turn a 'blind eye' to illegal practices because of a desire to encourage economic growth in their area (for

example, see CIVIDEP, 2009; Kynge, 2006; 2009). This selective blindness extends from the start to the finish of the production system. It is axiomatic that unless commodities can be sold, the surplus-value that they embody remains unrealised. Consequently, in addition to the wide range of legally sanctioned spaces and associated practices of sale for commodities (see Hudson, 2005, 145-166), there are also specific spaces in marginalised locations as well as iconic and well-known street markets in major global cities such as Beijing, London, Los Angeles, New York and Paris in which illegally produced commodities are sold (Chaudhry and Zimmerman, 2010, 42-43). Such markets, which state regulators regard with 'blind eyes', effectively legitimate the illegal activities involved in the prior production of the commodities on sale there. In so doing, they enable producers to realise the surplus-value embodied in those commodities and consumers to acquire the symbolic value and prestige of premium brands at a fraction of the price of the genuine article, undercutting the latter in the market while to all intents and purposes appearing to be the genuine article. One consequence of systematically turning a blind eye to illegal activities, however, is a loss – often considerable – of revenue to the state that could be used for progressive developmental purposes and indeed to promote more sustainable forms of economic activity and practice. From another – and potentially more progressive – perspective, however, insofar as the reproduction of uneven development creates spaces in which challenges emerge to the existing capitalist order, it potentially threatens its sustainability. Whether and how such potential is realised is of course a different matter.

### **Challenging illegality in globalising circuits of productive capital?**

*In conclusion*, from the perspective of capital the reason for the expansion and widespread presence of illegal working practices is crystal clear: the imperative to make a higher mass and/or rate of profit than one's competitors. This is a very visible manifestation of the competitive pressures that are genetically encoded into capitalist relations of production. In this sense, illegality is critical to the success of individual competing companies and to the short-term sustainability of contemporary capitalist arrangements. However as Polanyi (1944) noted some time ago, deepening capitalist social relations and market disciplines, challenging existing cultural norms and accepted forms of social behaviour, characteristically trigger a response that contests the direction of change. Consequently, economic development is characterised by a 'double movement', a tension between social forces

pushing for increased marketization and those opposing them. There is evidence of growing resistance to the flouting of environmental legislation and the consequent erosion of environmental sustainability and to working practices that are seen as immoral as well as illegal and so to the longer-term political and social sustainability of forms of production that are dependent on the hyper-exploitation of labour.

### **Illegal flows of money, spaces of sanitisation and disguise: the heightened significance of the illegal in globalising capitalism**

As the passing references above to illegal movements of people and things imply, illegal working practices in spaces and systems of production are simply one facet of the much more general occurrence of the illegal in the contemporary economy of spaces and flows. There is extensive evidence of illegal flows of people, of commodities (some legal, others illegal, such as drugs) and money, especially the laundering of money from the illegal economy back into the mainstream legal economy as 'clean' money capital. This last activity is of particular significance in the context of the systemic sustainability of contemporary economic arrangements and the relationships between the flows of illegally produced commodities, illegal migrants and illegal flows of money are complex and, by design, opaque. That said, these monetary flows are the focus of this section and just as national states and regulatory organisations are implicated in illegal activities of production and trade, so too are they deeply implicated in facilitating flows of money from the illegal to legal economy.

As Castells (2010, 183) points out, emphasising the symbiotic links between illegal activities and the overall accumulation process, "[t]he whole criminal system only makes sense if the profits generated can be used and reinvested in the legal economy". Some money realised through illegal activities undoubtedly remains within circuits of illegal activity, in part financing activities that compete with those that are legally based. However, it is estimated that at least two thirds of the money earned in the illegal economy is immediately spent in the legal economy (Schneider and Enster, 2000). While the precise magnitude may be a matter for debate, the existence of the flow and the fact that it is significant is not. Some of

this money is used to support livelihoods and enables increased commodity consumption. A much greater proportion becomes money capital, however, invested in diverse legitimate activities and spaces in mainstream markets. This both enhances the competitive position of those who own it and contributes systemically to the expanded reproduction of capital and to the sectoral and spatial distribution of growth. Furthermore, the flows of money from illegal activities that become invested in the legal mainstream raise the question of the spaces in which illegally acquired profits become 'clean' money.

This cleansing principally occurs in a particular type of space - offshore tax havens (OTHs), though by no means exclusively so there. For example, in 1997 the 55 banks in the Paraguayan city of Ciudad del Este, located where its border meets those of Argentina and Brazil at the "Triple Frontier", laundered an estimated \$45 billion or generated mainly from cocaine revenues from the Andean countries (Naím, 2007, 142-3). OTHs are legal jurisdictions created as a result of collusion between national states and major capitalist interests, "secrecy spaces" (Christensen and Hampton, 1999) that provide an interface between legal and illegal economies. OTHs were originally established as spaces in which perfectly legal (though perhaps ethically and morally dubious) activities of tax avoidance were permissible. Subsequently they have become the sites of a majority of many of the financial transactions of the global economy: over 50% of international bank lending, approximately 33% of foreign direct investment and 50% of global trade is routed on paper via tax havens which account for only 3% of world GDP (Christensen, 2011, 178). The expansion of OTHs has been enabled by developments in ICTs and closely linked to the liberalisation of global capital markets and the growing dominance of processes of neoliberalisation (Sikka, 2003). As a result, however, "legal institutions granted special status and privilege by society have been subverted to purposes for which they were never intended" (Christensen, 2011, 183).

Most OTHs are closely linked to major OECD economies. About half are linked to the UK, either as Overseas Territories, Crown Dependencies or members of the Commonwealth. Moreover, many OTHs are not literally "offshore" as the term is strictly a political statement about the relationship between the state and parts of its related territories (Palan, 1999). Indeed, such spaces have been created at the heart of the globalising economy in cities such as London and New York, with differential regulatory regimes that share one aspect in



common: they differentiate regulatory standards as between domestic resident capital and non-resident international capital (Unger and Rawlings, 2008). As the spate of press reports in 2012 emphasised, major banks such as Barclays, HSBC and Standard Charter may well have been routinely involved in money laundering through their bases in London, New York and so on. As Castells (2012, xx1, emphasis added) notes, “[w]orldwide, money laundering networks have taken advantage of a giant market of financial derivatives and loosely regulated institutions, *including institutions located in main financial centres*”.

Advanced capitalist states (such as Switzerland, the UK and USA) frequently collude in preventing the development of effective international regulation to tackle illegal financial flows and police cross-border financial flows in and out of the OTHs, precisely because they play a pivotal role in the global accumulation process and the ‘new international order of disorder’ that this generates. These powerful national states and the international institutions that they dominate, notably the World Bank and IMF, and the interests represented and prioritised through them, have been instrumental in constructing the crisis generating invisible architecture of globalisation as well as its more publicly visible institutional forms. Far from this architecture being a *deus ex machina* imposed from above on hapless and helpless national states, powerful national states were and are integrally involved in its construction - although of course it was then imposed on other hapless weaker and peripheral states at considerable cost to the majority of their populations.

As a result, OTHs have been central to the emergence of neoliberal globalisation and the opaque practices that spawned the innovative financial products such as complex derivatives that lay at the heart of the global financial crisis that exploded in 2008 (Kaletsky, 2010; Patterson, 2010). Because OTHs are permissive spaces, they allow – indeed encourage - transactions and flows that elsewhere would be deemed illegal and so enable profits generated in the illegal economy to be sanitised and recycled into the circuits of the legal. Elaborate schemes are devised to “weave dirty money” (Christensen, 2011, 183) into commercial transactions and disguise the proceeds of crime and tax evasion using complex multi-jurisdictional structures that exploit the asymmetries among regulatory spaces. Precisely because they involve activities on the fringes of or beyond the boundaries of formal legal regulation, such offshore financial activities require a high degree of trust to

enable them to function successfully as socially constructed key nodes in global financial networks (Hudson, 1998).

The liberalisation of capital markets led to an eightfold expansion of cross-border financial flows between 1990 and 2006 (McKinsey Global Institute, 2008), of which around 20% are illegal. A vast quantity of money –estimated at USA\$1.6 trillion annually - flows illegally into offshore accounts (Baker, 2005). Proceeds from bribery, drugs money laundering, human trafficking, counterfeit currencies and goods, smuggling, racketeering and illegal arms trading account for around 35% of such cross-border flows originating from developing and transitional economies. In contrast, the remaining 65% originate from the proceeds of illegal commercial activity, incorporating mispricing, abusive transfer pricing, and fake and fraudulent transactions, indicative of the pervasive character of illegality in the mainstream 'legal' economy. However, national states and multilateral agencies have largely downplayed concerns about "dirty money" and money laundering, except, revealingly and significantly, in relation to drugs and terrorism, which account for only a small proportion of illegal cross-border flows. This discursive selectivity reflects a tacit recognition of the intimate relationships between legal and illegal activities in the routine constitution of capitalist economies and of the pivotal role of OTHs as the spaces in which the financial flows between them takes place. As Castells (2010, 172) puts it "[a]t the heart of the system is money laundering by the hundreds of billions (maybe trillions) of dollars. Complex financial schemes and international trade networks link up the criminal economy to the formal economy, thus deeply penetrating financial markets and constituting a critical, volatile element in a fragile global economy." Castells thus emphasises the way in which the contemporary capitalist economy encourages and facilitates the systematic and large-scale laundering of "dirty money". In stark contrast, such limited attention as is given to seeking to halt such flows is focussed upon "bribery of public officials and looting by despots and their cronies. ... the prevailing corruption discourse remains largely focused on pointing fingers at petty officials and ruling kleptomaniacs" (Christensen, 2011, 181-184).

In summary, since the criminal economy is a capitalist economy, the economic rationale for illegal activities depends upon the money that they realise becoming money capital invested in legitimate legal activities in the formal economy – and this crucially depends upon

successful money laundering operations. At the same time, however, the economic sustainability of the mainstream depends both upon the widespread deployment of illegal activities and upon continuous and substantial inflows of money from the illegal to the legal economy. The legal and illegal thus co-exist in a symbiotic relationship. As a result of the explosion of global financial flows OTHs have become major sites of activity in global financial markets and have become closely entangled with servicing illegal economic activities, precisely because of the lack of transparency that surrounds transactions carried out in and through them, either because of banking secrecy laws or through *de facto* judicial arrangements and banking practices. The secretive legal instruments used for legal (if morally dubious) tax avoidance are also used for illegal tax evasion linked to a wide range of other criminal activities. OTHs encourage and enable large scale corruption by providing an operational base used by legal and financial professionals, and their clients, to exploit the limits to legislation and gaps within and between national systems of tax regulation. The bulk of money laundering operates via investments in securities and transfers of funds in global financial markets. Hidden behind a cloak of legal regulations, the legislative gaps are significant - while capital flows have become globally hypermobile, regulatory systems remain largely based on national territories, allowing 'dirty' money to be laundered through complex multi-jurisdictional ladders operating through the global banking system in which OTHs are key locations. This has systemic implications. Since criminal capital is involved in high-risk activities in markets in which the speed, volatility and volume of electronic market transactions has increased greatly, it follows, and amplifies, speculative turbulence in financial markets. Thus, it has become an important source of destabilisation of international financial and capital markets, not least in contributing to the global financial crisis that began in 2008. The systemic threats that this poses to capitalist development are self-evident.

## Conclusions

The symbiotic relationships between illegal and legal activities in ensuring the sustainability of the contemporary form of global capitalism are both deeply embedded and deeply contradictory. While symbiotic, these relationships are also contingent in the sense that their significance, while systemically structural, varies in the extent to which they emerge and become dominant in specific times and spaces. From one point of view, the

competitive success of particular companies and states and their economic sustainability is clearly crucially dependent upon their involvement in illegal production and/or trading activities, not least in money laundering and the cleansing of money that originated in the illegal economy so that it can be deployed as money capital in the legal economy. On the other hand, illegal activities within production systems may threaten the environmental, social and political sustainability of the spaces in which they occur while the burgeoning illegal practices in the financial sector, often linked to and enabling and facilitating money laundering activities through which illegally acquired money becomes legally legitimate money capital, threaten the systemic sustainability of globalised capitalism.

The major global financial crisis that erupted in 2008 dramatically revealed that unfettered markets in fact threatened the sustainability of the capitalist economy and threatened to provoke an unparalleled depression in the capitalist economy and was only (so far at least) averted as a result of unprecedented and very class and territorially specific national state action and intervention. This included printing money on an unprecedented scale and the de facto nationalisation of banks and other major financial institutions by national governments, along with action by supra-national organisations that, at one level at least, espoused a neoliberal rhetoric that championed the virtues of unfettered markets as economic steering mechanisms.

Crucially, however, such state interventions can only displace rather than abolish economic crisis tendencies. At the same time, a global ecological crisis is immanent as a result of both illegal but predominantly legal activities, registered most visibly in the effects of human activity on the global climate and global warming – the only question is when, not if such a crisis erupts. The prospect of the coupling of economic and ecological crisis raises serious questions as to the future sustainability of capitalism as we have come to know it, and if not its replacement by something else, then at a minimum raises serious questions as to what sustainable forms of capitalism – ecologically, socially and politically as well as economically – might be possible in future, and what they would look like.

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